

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #3	CCRB Case #: 202004172	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/30/2020 7:20 PM, Saturday, 05/30/2020 7:24 PM, Saturday, 05/30/2020 7:25 PM	Location of Incident: In front of 297 Seventh Avenue; in front of 299 Seventh Avenue; in front of 305 Seventh Avenue	Precinct: 13	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/10/2020 5:39 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/10/2020 5:39 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Errol Murphy	24047	953161	SRG 1
2. Officers			
3. POM Richard Meilink	23704	953094	SRG 4
4. LT Adam Mellusi	00000	931825	SRG 2
5. LSA Daniel Gallagher	00000	922389	LEG BUR

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Oquendo	01649	950985	SRG 1
2. SGT Steven Lackos	04638	935671	DIS CTL
3. POM Christophe Boddy	14086	965953	013 PCT
4. POM Shun Larkins	13260	947156	SRG 3
5. POM Anthony Ruggiero	07821	953348	SRG 5
6. POM Michael Prior	18462	952130	HARBOR
7. POM Mauricio Thomas	26957	945466	SRG 2
8. POM Bryan Wilson	10392	942712	SRG 2
9. POM Jose Cruz	21729	921245	SRG 1
10. POM Steven Chimienti	00155	939999	SRG 4
11. CPT Joseph Taylor	00000	924542	SRG 3
12. SGT Thomas Durkin	01109	906161	SRG 1
13. SGT Duane Barnes	04713	946626	SRG 4
14. POM Christophe Foley	08327	955029	SRG 1
15. POM Edward Weisenburger	18143	952338	SRG 1
16. SGT Charles Miele	04711	939037	SRG 1
17. POM Stephen Centore	31854	936328	SRG 4
18. POM Leon Lewis	28932	936946	SRG 5

Officer(s)	Allegation	Investigator Recommendation
A.LT Adam Mellusi	Force: In front of 297 Seventh Avenue in Manhattan, Lieutenant Adam Mellusi used physical force against § 87(2)(b)	
B.POM Richard Meilink	Force: In front of 297 Seventh Avenue in Manhattan, Police Officer Richard Meilink struck § 87(2)(b) with a vehicle.	
C.POM Errol Murphy	Force: In front of 299 Seventh Avenue in Manhattan, Police Officer Errol Murphy hit § 87(2)(b) against a bicycle.	
D.POM Errol Murphy	Abuse: In front of 299 Seventh Avenue in Manhattan, Police Officer Errol Murphy threatened to arrest § 87(2)(b)	
E. Officers	Force: In front of 305 Seventh Avenue in Manhattan, officers used physical force against an § 87(2)(b)	
F.LSA Daniel Gallagher	Abuse: In front of 299 Seventh Avenue in Manhattan, Lieutenant Daniel Gallagher threatened to arrest an § 87(2)(b)	

Case Summary

On June 10, 2020, § 87(2)(b) filed this complaint via a CCRB online complaint form on behalf of himself and three unknown victims, one of whom was identified by the investigation as § 87(2)(b) and two of whom remain unidentified.

On May 30, 2020, at approximately 7:20 P.M., § 87(2)(b) was participating in a protest against police brutality along with many other protesters. Numerous officers from multiple commands, including the 13th Precinct, the 100th Precinct, SRG 1, SRG 2, SRG 3, SRG 4, SRG 5, the Harbor Unit, the Legal Bureau, and the Disorder Control Unit responded. At the time, § 87(2)(b) was walking south on Seventh Avenue with other protesters when officers blocked off southbound access to the road and sidewalk at the corner of West 27th Street. While § 87(2)(b) stood in front of 299 Seventh Avenue, he witnessed Lt. Adam Mellusi of SRG 2 allegedly knock § 87(2)(b) to the ground and tackle him in front of 297 Seventh Avenue (**Allegation A: Force**, § 87(2)(g)). Then, in the same location, PO Richard Meilink of SRG 4 struck § 87(2)(b) with his bicycle (**Allegation B: Force**, § 87(2)(g)). While § 87(2)(b) was still standing in front of 299 Seventh Avenue, PO Errol Murphy of SRG 1 pushed his bicycle into § 87(2)(b) (**Allegation C: Force**, § 87(2)(g)). PO Murphy then threatened to arrest § 87(2)(b) (**Allegation D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) then observed officers allegedly tackling § 87(2)(b) in front of 305 Seventh Avenue (**Allegation E: Force**, § 87(2)(g)). During the arrest of a civilian occurring across the street, § 87(2)(b) also witnessed Lt. Daniel Gallagher of the Legal Bureau allegedly point at § 87(2)(b) who was standing in front of 299 Seventh Avenue, and shout, “You’re next” (**Allegation F: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was issued criminal court summonses #§ 87(2)(b) and #§ 87(2)(b) for disorderly conduct in relation to this incident: one for obstructing vehicular or pedestrian traffic and another for congregating with other persons in a public place and refusing to comply with lawful police orders (**01 Board Review**). § 87(2)(b) was issued criminal court summonses #§ 87(2)(b) and #§ 87(2)(b) for disorderly conduct in relation to this incident with the same charges as those in the summonses issued to § 87(2)(b) (**02 Board Review**).

The investigation obtained one Instagram Live cell phone video from § 87(2)(b) (**03 Board Review**), as well as body-worn camera (BWC) footage from the following officers: PO Meilink; PO Murphy; PO Christopher Boddy of the 13th Precinct; PO Jose Cruz of SRG 1; PO Mauricio Thomas and PO Bryan Wilson of SRG 2; PO Shun Larkins and Cpt. Joseph Taylor of SRG 3; Sgt. Duane Barnes, PO David Cardona, and PO Steven Chimienti of SRG 4; PO Anthony Ruggiero of SRG 5; Sgt. Steven Lackos of the Disorder Control Unit; and PO Michael Prior of the Harbor Unit (**04-18 Board Review**). Other BWC footage received, which the investigation deemed irrelevant, includes additional recordings from PO Boddy, PO Cardona, PO Murphy, and Sgt. Barnes, as well as footage from Sgt. Thomas Durkin and PO Edward Weisenburger of SRG 1; PO Rafael Morla of SRG 3; and PO Hector Torres, and PO Kerry White of SRG 4.

Findings and Recommendations

Allegation (A) Force: In front of 297 Seventh Avenue in Manhattan, Lieutenant Adam Mellusi used physical force against § 87(2)(b)

Allegation (B) Force: In front of 297 Seventh Avenue in Manhattan, Police Officer Richard Meilink struck § 87(2)(b) with a vehicle.

It is undisputed that on May 30, 2020, at approximately 7:20 PM, during a protest against police brutality in the vicinity of Seventh Avenue and West 27th Street, § 87(2)(b) threw an object at officers, after which Lt. Mellusi chased him and used physical force to gain custody of him. Further

undisputed is that, during this interaction, PO Meilink, who was riding toward them on the sidewalk, struck § 87(2)(b) with his bicycle, after which § 87(2)(b) fell to the ground. Officers then handcuffed § 87(2)(b) took him into custody, and issued him two summonses for disorderly conduct. Under dispute is whether Lt. Mellusi's use of force against § 87(2)(b) was permissible and whether PO Meilink deliberately rode his bicycle into § 87(2)(b) did not allege that PO Meilink struck § 87(2)(b) with a bicycle, but the allegation is being pled based on BWC evidence due to the potentially serious nature of the action.

During his CCRB interview, § 87(2)(b) stated that prior to interacting with PO Murphy, he witnessed numerous officers on the west side of Seventh Avenue between West 26th and West 27th Street, all of whom were wearing high visibility bicycle gear, fall or jump off their bicycles (**19-20 Board Review**). These officers then allegedly tackled a young black male and took him to the ground.

Although the incident involving § 87(2)(b) occurred on the east side of Seventh Avenue, BWC footage shows that § 87(2)(b) was the only black male who struggled with an officer wearing a bicycle uniform in the immediate area at the time. The investigation obtained § 87(2)(b)'s name from the BWC footage of his arresting officer, PO Cruz, attached to IA 76; at 9:55 minutes in this video, § 87(2)(b) states and spells his name (**07 Board Review**). The investigation was not able to obtain a statement from § 87(2)(b). No police documents received in the investigation provided § 87(2)(b)'s phone number or email address. The investigation called § 87(2)(b) at phone numbers retrieved through Lexis/Nexis and Clear database searches but was unable to contact him (**21 Board Review**).

The only video footage retrieved by the investigation that captures the interactions between § 87(2)(b), Lt. Mellusi, and PO Meilink begins at 0:44 minutes in PO Meilink's BWC attached to IA 74 (**04 Board Review**). In the footage, PO Meilink rides his bicycle along the east sidewalk of Seventh Avenue, in front of 282 Seventh Avenue. At 0:45 minutes, Lt. Mellusi walks onto the sidewalk in front of 299 Seventh Avenue toward § 87(2)(b) who runs away from him toward the road. There are several civilians on the sidewalk in the immediate vicinity, but no other officers. At 0:46 minutes, Lt. Mellusi grabs hold of § 87(2)(b) by his shirt, while PO Meilink rides his bicycle south along the sidewalk towards them. Lt. Mellusi continues to hold § 87(2)(b) by his shirt, while they move south along the sidewalk toward PO Meilink. As they move, § 87(2)(b)'s head is pressed up against Lt. Mellusi's abdomen, his left hand is on Lt. Mellusi's right thigh, his shirt is pulled up to reveal his torso, and his legs are moving quickly. At 0:48 minutes, PO Meilink is not engaging either hand break as he collides with § 87(2)(b)'s bare torso in front of 297 Seventh Avenue. Lt. Mellusi's head is turned away from PO Meilink until less than a second before the collision. Lt. Mellusi and § 87(2)(b) begin to move toward PO Meilink's bicycle approximately two seconds before the collision. No footage exists from Lt. Mellusi's BWC.

In his testimony to the CCRB, Lt. Mellusi stated that while he was riding his bicycle south on Seventh Avenue as part of the SRG bike patrol assigned to the protest, he learned from an officer whose identity he could not recall that § 87(2)(b) had thrown an object at officers (**22 Board Review**). The officer provided a description of the perpetrator, which allowed Lt. Mellusi to identify § 87(2)(b) as the perpetrator. Lt. Mellusi did not recall the description of § 87(2)(b) that the officer provided to him. Lt. Mellusi saw § 87(2)(b) running back and forth between the sidewalk and the street, away from other officers. He then dismounted his bicycle to chase § 87(2)(b) on foot while screaming at him to stop. Lt. Mellusi stated that he did not recall the specific words he used when

telling § 87(2)(b) to stop. § 87(2)(b) did not comply, so Lt. Mellusi grabbed him by the back of his sweater. At the time, § 87(2)(b) was still moving his legs to try to run. When Lt. Mellusi grabbed his sweater, § 87(2)(b)'s motions caused them both to fall. Lt. Mellusi then used his bodyweight to take § 87(2)(b) to the ground. Lt. Mellusi characterized this as “minimum necessary force” and “by the book tactical restraint.” Lt. Mellusi did not independently recall PO Meilink’s bicycle colliding with § 87(2)(b). After watching PO Meilink’s BWC attached to IA 74 from the beginning until the 2:43 minute mark, Lt. Mellusi stated that he and § 87(2)(b) fell because § 87(2)(b) was attempting to swing away when PO Meilink’s bicycle collided with them. While he still did not independently recall PO Meilink’s bicycle colliding with § 87(2)(b) after watching the video, Lt. Mellusi stated that he did not believe that the collision was intentional, but rather something that happened because so much was happening so quickly at the time. During his interview, Lt. Mellusi explained that there was no BWC footage from his camera because its clip broke earlier that day, so he had to put it in his pocket.

PO Meilink testified that while riding his bicycle south on Seventh Avenue as part of the SRG bike patrol assigned to the protest, he witnessed § 87(2)(b) throw a bottle directly at officers (**23 Board Review**). PO Meilink then pursued § 87(2)(b) on his bicycle, keeping his eyes on him the entire time as he ran south on Seventh Avenue, then north, and then onto the sidewalk. PO Meilink did not recall if he or any other officer issued instructions to § 87(2)(b) during the pursuit. Less than one minute after § 87(2)(b) threw the bottle, PO Meilink saw Lt. Mellusi grab § 87(2)(b) as he was running and begin to pull him to the ground. PO Meilink stated that he was riding on the sidewalk in the general direction of Lt. Mellusi and § 87(2)(b) but not toward them when they fell in front of his bicycle and collided with it. PO Meilink further stated that he only had a split second in which he could have turned or stopped his bicycle and was unable to do so in time. PO Meilink testified that he was not trying to hit § 87(2)(b) with his bicycle and that he did not intentionally strike him.

During their interviews, both Lt. Mellusi and PO Meilink stated that they did not prepare any paperwork in relation to this incident (**22-23 Board Review**). A request to the NYPD for a Threat Resistance and Injury Worksheet related to this incident had negative results (**36 Board Review**).

According to NYPD Patrol Guide Procedure 221-01, “[t]he primary duty of all members of service (MOS) is to protect human life, including the lives of individuals being placed in police custody” (**24 Board Review**). The procedure further states, “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.” The procedure notes that “any application or use of force must be reasonable under the circumstances” and lays out specific criteria to determine whether the use of force is reasonable. These criteria are “a. The nature and severity of the crime/circumstances; b. Actions taken by the subject; c. Duration of the action; d. Immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders; e. Whether the subject is actively resisting custody; f. Whether the subject is attempting to evade arrest by flight; g. Number of subjects in comparison to the number of MOS; h. Size, age, and condition of the subject in comparison to the MOS; i. Subject’s violent history, if known; j. Presence of hostile crowd or agitators; k. Subject apparently under the influence of stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.”

The NYPD Driver Training Bike Unit’s Three-Day Bicycle Training Instructor Guide shows that officers assigned to bicycle patrol are trained in performing a “panic stop” (**25 Board Review**). In

dispute is whether the shove with the bicycle and the threat of arrest were permissible. Although § 87(2)(b) did not allege that PO Murphy threatened to arrest him, the allegation is being pled based on PO Murphy's BWC footage.

During his interview, § 87(2)(b) stated that when officers closed off Seventh Avenue, he initially tried to continue south along the sidewalk, but officers would not allow him to do so **(19-20 Board Review)**. § 87(2)(b) then stood at the southeast corner of the intersection with a group of protesters. To § 87(2)(b) the west side of the street looked clear and he believed that he might be able to cross and continue south from there. When the traffic light changed, § 87(2)(b) asked officers whose descriptions he was unable to provide, whether he could cross, and the officers told him that he could not. Then PO Murphy approached, holding a bicycle by the seat and handlebars, and began shouting, "Move! Move!" When § 87(2)(b) asked if he could walk south on the sidewalk or cross to the west side, PO Murphy just continued to shout, "Move!" PO Murphy then pushed the flat side of his bicycle into § 87(2)(b) so that the seat and the metal bars pressed into his lower abdomen. The strength of this shove was not very intense. § 87(2)(b) then decided to walk east on West 27th Street, where PO Steven Oquendo of SRG 1 handcuffed him soon thereafter. After this, § 87(2)(b) was transported to Manhattan Central Booking, where PO Oquendo issued him two summonses for disorderly conduct.

PO Murphy's BWC attached IA 77 shows the entire interaction between him and § 87(2)(b) **(05 Board Review)**. At 1:09 minutes, § 87(2)(b) stands on the road at the intersection of West 27th Street and Seventh Avenue, while filming with his cell phone, along with numerous other civilians doing the same. At 1:48 minutes, § 87(2)(b) walks a step over yellow caution tape laid on the ground just past the crosswalk, looks at PO Murphy and motions toward the west side of the street with his hand. PO Murphy tells him, "Stay on the sidewalk. Stay on the sidewalk, bro." Facing toward PO Murphy, § 87(2)(b) again gestures toward the other side of the street. PO Murphy then moves toward § 87(2)(b) and states, "Yeah, yeah, just stay on the sidewalk, bro. Just stay on the sidewalk, man." While he says this, § 87(2)(b) walks behind the caution tape and onto the sidewalk in front of 299 Seventh Avenue. § 87(2)(b) states something inaudible to which PO Murphy responds, while gesturing east, "No, I want you to stay on that sidewalk or go that way. Street is closed." § 87(2)(b) points south and states, "You can't go down the sidewalk." PO Murphy points east and states, "The street is closed. Go that way." § 87(2)(b) points south again and states something inaudible. PO Murphy states, "Go down that way," to which § 87(2)(b) responds, "Which way?" PO Murphy points east and states, "Behind you." § 87(2)(b) looks behind him and states, "I'd like to go south." PO Murphy states, "Okay, go around the block," and walks away.

The next relevant segment of PO Murphy's BWC begins at the 2:15 minute mark when § 87(2)(b) is standing on the edge of the sidewalk in front of 299 Seventh Avenue, along with other civilians. PO Murphy tells the group, "Sidewalk is temporarily closed." § 87(2)(b) points to the west side of the street and states, "That one's not." PO Murphy states, "Use your eyes, bro." § 87(2)(b) then turns around and walks east briefly, after which he turns back around and stands facing PO Murphy, who points east and states, "Go that way." At 2:33 minutes, an officer begins stating repeatedly over a loudspeaker, "This is an unlawful assembly. If you do not disperse, you will be placed under arrest." The other civilians on the sidewalk then disperse, with most walking east. § 87(2)(b) begins to slowly back up east on West 27th Street and PO Murphy states, "See you later, dude." Still facing Seventh Avenue, just steps from the corner, § 87(2)(b) slows his backward motion and continues to hold up his cell phone with his right hand, while PO Murphy walks toward him. As PO Murphy

gets closer, § 87(2)(b) turns toward him with his right hand still holding up his cell phone and his left hand up in the air. At 2:46 minutes, while holding his bicycle up, PO Murphy states, “Back up. Go home. Back up, man,” and then pushes his bicycle toward § 87(2)(b) who grabs its seat with his left hand. Still in front of 299 Seventh Avenue, § 87(2)(b) moves slightly east on West 27th Street, while still facing PO Murphy, who states, “Back up. I told you to get down the street, didn’t I?” § 87(2)(b) moves east while still facing PO Murphy, who then states, “Unlawful assembly, unlawful assembly.” PO Murphy pushes his bicycle in § 87(2)(b)’s direction again without making bodily contact. § 87(2)(b) who is still holding his phone in his right hand, continues to face PO Murphy while stating, “You’re live. You’re live.” PO Murphy again states, “Unlawful assembly. You want to get locked up, bro? Back up.”

§ 87(2)(b)’s cell phone video attached to IA 30 shows only the end of his encounter with PO Murphy (**03 Board Review**). At 0:01 second in the recording, PO Murphy stands facing and close to § 87(2)(b) while holding his bicycle, after which he walks away. The loudspeaker warnings to disperse or be subject to arrest are audible. At 1:31 minutes, § 87(2)(b) is slowly walking east on West 27th Street, and in front of 159 West 27th Street, when PO Foley and PO Oquendo run over to him. His video goes black, but the audio continues to record, and he states, “I am not resisting. I am not resisting.”

In his testimony to the CCRB, PO Murphy stated that he did not independently recall interacting with § 87(2)(b) using his bicycle to push him, or threatening to arrest him (**26 Board Review**). Upon being questioned about the tactic that § 87(2)(b) described, PO Murphy stated that he had used his bicycle that way multiple times on that date to “guide people back,” which was a tactic that he had learned during SRG bicycle training. PO Murphy stated that the tactic involves officers extending their arms forward while holding a bicycle and pushing it straight outward toward civilians to guide them back. He further stated that he was permitted to use this tactic if he had asked someone to move back several times and they had not done so. After watching his BWC from the 2:40 minute to the 2:59 minute mark, PO Murphy stated that he still did not recall the interaction but that the footage showed him using the tactic described to guide § 87(2)(b) back with his bicycle. PO Murphy further testified that the conditions allowed for him to use this tactic because § 87(2)(b) had not moved back even after he had told him to do so several times. Regarding the threat of arrest, PO Murphy stated that he did not know if asking § 87(2)(b) if he wanted to be under arrest constituted a threat of arrest and did not recall what § 87(2)(b) could have been arrested for because he did not recall the specifics of the situation.

During his CCRB interview, Lt. Mellusi watched PO Murphy’s BWC from the two-minute to the three-minute mark and stated that the tactic PO Murphy used was one taught extensively during SRG bicycle training (**22 Board Review**). Lt. Mellusi stated that officers may use the tactic if they want to take back control of the area and would not first use their hands to do so because they would then have to leave their bicycles behind.

In his testimony to the CCRB, PO Oquendo stated that he and other officers were assigned to help clear the area and were issuing verbal warnings to civilians to disperse (**27 Board Review**). Additionally, officers were issuing multiple warnings over the loudspeaker, loudly and clearly enough that they could be heard from a block away, that civilians should disperse and that if they failed to do so, they would be arrested. PO Oquendo stated that any individual who had not dispersed after these warnings were issued was subject to arrest, including § 87(2)(b).

At Manhattan Central Booking, PO Oquendo issued two summonses to § 87(2)(b) #§ 87(2)(b) for PL 240.20 (5) obstructing vehicular or pedestrian traffic, and #§ 87(2)(b) for PL 240.20 (6) congregating with others in public and refusing to disperse by lawful police order to disperse (**02 Board Review**). The narrative for both summonses is the same and reads, “At TPO I observed defendant with approximately 50 other people present on the sidewalk at West 27 Street and 7th Avenue blocking pedestrian traffic in that pedestrians would be unable to pass through. Defendant was advised by the NYPD to leave the sidewalk and refused to do so.”

According to NYPD Patrol Guide Procedure 221-01, “[t]he primary duty of all members of service (MOS) is to protect human life, including the lives of individuals being placed in police custody” (**24 Board Review**). The procedure further states, “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.” The procedure notes that “any application or use of force must be reasonable under the circumstances” and lays out specific criteria to determine whether the use of force is reasonable. These criteria are “a. The nature and severity of the crime/circumstances; b. Actions taken by the subject; c. Duration of the action; d. Immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders; e. Whether the subject is actively resisting custody; f. Whether the subject is attempting to evade arrest by flight; g. Number of subjects in comparison to the number of MOS; h. Size, age, and condition of the subject in comparison to the MOS; i. Subject’s violent history, if known; j. Presence of hostile crowd or agitators; k. Subject apparently under the influence of stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

The NYPD July 2015 Police Student’s Guide Use of Force curriculum outlines the conditions and recommended use of force on a “Force Option Wheel” in which each segment on the wheel represents an increasing level of force (**28 Board Review**). The segments on the wheel in order of increasing force are as follows: professional presence, verbal persuasion/command voice, unarmed physical force, compliance holds, pepper spray, impact techniques, and deadly physical force. For minor violations or disorderly conditions involving no apparent threats to officers or others, officers are first instructed to utilize verbal persuasion, which comprise friendly requests or suggestions. If the civilian refuses to comply with this persuasion, officers are instructed to use a “command voice” or “firmly given directions” to let civilians know “you mean business, and that it is their best interest to submit to you.” While the next step along the force continuum is unarmed physical force like “firm grips” and “compliance holds,” officers are cautioned to exercise significant caution before engaging in hand-to-hand confrontation since it can compromise the security of an officer’s weapons and since it is not possible to know whether an officer will be able to overpower and subdue an individual with these tactics. Instead officers are advised to use pepper spray when possible; when it is not possible, officers are advised to use impact techniques, like those utilizing batons. The curriculum notes that officers “may use the baton as an instrument of force to steer a disorderly crowd into a designated area.” The curriculum was obtained from general NYPD trainings and it is unclear if PO Murphy underwent this specific training.

In its “Use of Force” section, the NYPD Driver Training Bike Unit’s 3-Day Bicycle Training guide notes that officers may use their bicycles as “an extension of” their gun belts (**25 Board Review**). The training does not provide any further guidance on this tactic, stating that officers should follow the procedure as outlined in the Patrol Guide.

Per New York Penal Law 240.20, “a person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof” they obstruct vehicular or pedestrian traffic or congregate with others in a public place and refuse to comply with lawful police orders to disperse **(29 Board Review)**. Disorderly conduct is a violation.

§ 87(2)(g)

As noted above, PO Murphy’s BWC footage shows that he issued numerous orders to § 87(2)(b) to disperse and that § 87(2)(b) did not comply. Additionally, warnings issued over the loudspeaker at the time instructed civilians to disperse, informing them that they would be placed under arrest if they did not do so. § 87(2)(g)

Allegation (E) Force: In front of 305 Seventh Avenue in Manhattan, officers used physical force against an § 87(2)(b)

During his CCRB interview, § 87(2)(b) stated that he observed multiple officers standing in front of 305 Seventh Avenue surround and tackle a white male who had previously been following instructions to disperse by walking east on West 27th Street with a group **(19-20 Board Review)**. § 87(2)(b) could not describe any of these officers and could not provide any further description of the victim.

At 0:59 minutes in the cell phone video that § 87(2)(b) provided the investigation attached to IA 30, at least eight officers surround a male who had been previously walking east on West 27th Street **(03 Board Review)**. One or two of these officers push the civilian, who falls forward. The video is taken from across the street and neither the civilian nor the officers are close enough to discern

physical features, shield numbers, or other distinguishing characteristics. None of the officers interviewed recalled the interaction and none of the BWC footage retrieved captured it.

§ 87(2)(g)

Allegation (F) Abuse of Authority: In front of 299 Seventh Avenue in Manhattan, Lieutenant Daniel Gallagher threatened to arrest an § 87(2)(b)

During his CCRB interview, § 87(2)(b) stated that an unknown male civilian standing in front of 299 Seventh Avenue, while watching officers conduct an arrest of the individual on the opposite corner, shouted, “Why so many? Why so fucking many?” **(19-20 Board Review)**. After this, Lt. Gallagher pointed at the civilian and allegedly shouted, “You’re next.” This interaction is visible at 1:10 minutes in § 87(2)(b)’s cell phone video attached to IA 30 **(03 Board Review)**. During his CCRB interview, after watching the relevant footage in § 87(2)(b)’s video, as well 5:15 to 5:31 minutes in PO Cardona’s BWC attached to IA 311, which shows the same officer at a different point during the incident, Lt. Mellusi identified the officer as Lt. Gallagher **(22, 18 Board Review)**. Lt. Gallagher’s MOS photo matches the officer in the video, confirming that he is the subject of this allegation **(37 Board Review)**.

According to DAO, Lt. Gallagher retired on July 28, 2020 **(30 Board Review)**. § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one other CCRB complaint, which was referred to the Office of the Chief of the Department **(31 Board Review)**.
- This is the first complaint to which § 87(2)(b) has been a party **(32 Board Review)**.
- Lt. Mellusi has been a member of service for 18 years and has been a subject in four additional complaints and 11 additional allegations, one of which was substantiated.
 - 201208548 involved a substantiated allegation of a discourtesy (word). The Board recommended Instructions and the NYPD did not impose a penalty. § 87(2)(g)
- PO Meilink has been a member of service for eight years. This is the first CCRB complaint to which he has been a subject.
- PO Murphy has been a member of service for eight years. This is the first CCRB complaint to which he has been a subject.
- Lt. Gallagher has been a subject in one other complaint, which was not substantiated. CTS does not provide the number of years for which Lt. Gallagher was a member of service.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- On February 9, 2021, the New York City office of the Comptroller confirmed that neither § 87(2)(b) nor § 87(2)(b) has filed a Notice of Claim regarding this incident **(33 Board Review)**.
- According to the Office of Court Administration, neither § 87(2)(b) nor § 87(2)(b) has a history of criminal convictions in New York City **(34-35 Board Review)**.

Squad No.: 3

Investigator: Rachel Adler Investigator Rachel Adler 6/7/2021
Signature Print Title & Name Date

Squad Leader: Olga Golub SL Olga Golub 6/7/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date